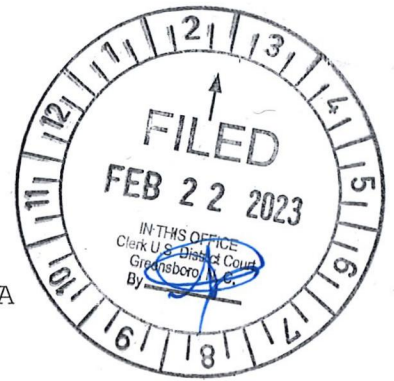


IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



ANTHONY DIAL,

Plaintiff,

v.

ROBESON COUNTY,

Defendant.

1:20-cv-1135

ORDER

On February 19, 2023, the parties filed a Joint Motion to Continue Trial Date. (Doc. 40.) The parties request that trial be continued from the presently scheduled date during the April Term of the Master Trial Calendar to the next available term. (Id. at 1.) For the following reasons, this court finds the motion should be denied.

First, the motion recites that "[o]n February 14, 2023, counsel received the Court's Notice of Trial Calendar. Trial in this matter is currently set for April 3, 2023." (Id. at 2.) It is true that a notice was sent on February 14, 2023 advising of the April Term setting. (See Doc. 38.) However, the case was set for trial during the April Term by notice to the parties on April 7, 2022. (See Doc. 18.) The parties have been on notice of the April Term setting for over nine months. There is no

surprise to the April Term setting which might suggest a continuance is necessary or appropriate.

Second, Plaintiff's counsel recites that Plaintiff is undergoing a medical procedure and that he will be out of work for six weeks. (Doc. 40 at 2.) That argument fails to explain why Plaintiff chose to schedule a medical procedure on the eve of the trial date. Even assuming, however, that the medical procedure is an urgent medical necessity, there are dates for trial available in late April and May that would appear to accommodate Plaintiff's recovery and allow the trial to proceed.

Third, the motion recites that "Counsel for the County is currently scheduled for two trials on April 3, 2023. Counsel is scheduled for trial in this matter and in an unrelated matter- The McClatchy Company, et al. v. Town of Chapel Hill, 21CV722." (Id. at 2.) The actual case number for that case is 1:21-cv-765, and the case is set for trial before this court. Summary judgment is pending in both this case and in The McClatchy Company, et al. It is premature to determine whether a continuance is necessary. See, e.g., LR 56.1(f) ("The pendency of summary judgment motions will not serve to delay trial on the date set by the Court in accordance with LR 40.1.")

This court finds the motion to continue, (Doc. 40), should be denied without prejudice.

**IT IS THEREFORE ORDERED** that the parties' Joint Motion to Continue Trial Date, (Doc. 40), is **DENIED**.

This the 22<sup>nd</sup> day of February, 2023.

William L. Osburn, Jr.  
United States District Judge